

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

CITY OF SOUTH BEND,)	
)	
Plaintiff,)	
)	
v.)	Cause No. 3:12-cv-475-JVB-CAM
)	
HOLDER, <i>et al.</i> ,)	
)	
Defendants.)	

MOTION TO STRIKE AFFIDAVIT OF ALADEAN DEROSE

Comes now Defendants, DePaepe and Duerring, and move pursuant to Rule 56(c)(4) to strike the Affidavit of Aladean DeRose filed as an attachment to the City's Motion for Summary Judgment based upon the following grounds.

1. That the Affidavit of Aladean DeRose filed in conjunction with the City's Motion for Summary Judgment does not contain facts that would be admissible into evidence nor made on personal knowledge of the affiant.
2. The Affidavit of Aladean M. DeRose is solely for the purpose of admitting a letter written by a non-party in the case at bar. The letter is allegedly authored by David Capp, United States Attorney for the Northern District of Indiana.
3. David Capp, as stated, is not a party to this action.
4. That the letter attached to Aladean DeRose's Affidavit is hearsay and the affiant, Aladean DeRose would be unable to testify to the contents of said letter in any trial or hearing in this case as the contents are hearsay, regardless of whether or not the letter is kept "in the ordinary course of the City's Legal Department's business".

5. The mere presence of a document, regardless of authorship, in retained files of a business entity does not in and of itself qualify such document as record of regularly conducted activity.

WHEREFORE, the defendants, DePaepe and Duerring, requests this Court issue an Order striking the Affidavit of Aladean M. DeRose and for all other just and proper relief.

Respectfully submitted,

/s/Marielena Duerring

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CERTIFICATE OF SERVICE

I certify a copy of the foregoing pleading was served upon all attorneys of record via the Court's ECF system on December 13, 2013.

/s/Marielena Duerring
Marielena Duerring #19835-71